

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7231 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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SHANKARBHAI WAGABHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 12/04/99

ORAL JUDGEMENT

The petitioner has challenged the order passed by the Deputy Secretary, Food and Civil Supply Department on 3-9-97 in Appeal No.39/93 preferred over the of the Collector, Banaskantha at Palanpur, passed by him in Case No.3/93 on 5-7-1993 confiscating huge quantity of wheat i.e. 37.47 quintals amounting to Rs.11,428.35, under the provisions of Essential Commodities Act. After issuing a show cause notice under Gujarat Essential Articles (

Licensing, Control and Stock Declaration) Order of 1981, the Collector confiscated the goods after considering various aspects like irregularities in maintenance of bill book, Chalan, etc.

2. The main contention before the appellate authority was that the State Government by an order issued under the Gujarat Essential Articles (Licensing, Control and Stock) (Declaration) (Amendment) Order, 1986, had deleted wheat from part 1 of the Schedule 1 under the head of Food-grains. The order came to be issued in the Government gazette on 27-10-86, and therefore, according to the petitioner, the provisions could not have been applied to the facts of the present case. However, the learned appellate authority in the order has not dealt with that question as can be seen from a plain perusal of the order and as such the present petition is preferred challenging the order.

3. Mr. A.M. Dagli learned advocate appearing for Mr. Y.S. Lakhani for the petitioner has placed reliance on the publication of gazette deleting wheat from the list of food-grains which is produced at Annexure "E". The incident in question took place on 15-3-93 and he submitted that the notification was very much in existence at that time, and therefore, learned Collector could not have passed the order of confiscation, nor could the appellate authority have confirmed the same.

4. This matter was earlier listed and Rule was issued and notice as to interim relief was also issued on 7-10-98. Mr. Jani appears for the respondents. In facts and circumstances of the case, the matter is taken up for final hearing. The affidavit in reply is not filed by the respondents. Today, no-one appears for the respondents in the second round also.

5. Having perused the order passed by the learned Collector, it is clear that the order is passed by virtue of powers vested in the Collector under Section 6-A of the Essential Commodities Act, 1955. The order was passed after issuing show cause notice which was received by the petitioner and the explanation tendered by the petitioner are not accepted by the Collector. The said order was challenged before the appellate authority namely the Deputy Secretary, Food and Civil Supply Department, Gandhinagar. The learned appellate authority has recorded in its order that the appellant-petitioner has raised this issue that by virtue of the notification in the gazette, wheat is deleted from the Schedule of the food-grains with effect from 27-10-86. This point has

not been dealt with by the appellate authority at all.

6. Annexure "E" is the copy of the notification in question which runs as under :

51. The Gujarat Essential Articles
(Licensing, Control and Stock)
(Declaration) (Amendment) Order 1986-
Some words deleted from Sch. of the
Principal Order, 1981.

In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) read with the Order of the Government of India, Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) No.S.O. 681 (E), dated the 30th November, 1974 and S.O. 682 (E), dated the 30th November, 1974 and the Ministry of Agriculture (Department of Food) G.S.R. Nos. 452 (E), dated the 25th October, 1972, G.S.R. 168 (E), dated the 13th March, 1973 and the Ministry of Agriculture (Department of Food) No.G.S.R. 800, dated the 9th June, 1978, and with the prior concurrence of the Central Government, the Government of Gujarat hereby makes the following order, namely -

1. (1) This Order may be called the Gujarat Essential Articles (Licensing, Control and Stock) (Declaration) (Amendment) Order, 1986,
(2) It shall come into force at once.

2. In the Gujarat Essential Articles
(Licensing, Control and Stock Declaration) Order, 1981, in Schedule 1, in part 1, under the heading "foodstuffs" under the sub-heading "A". Food-grains including products thereof "the entry " (1) Wheat" shall be deleted.

(Order No.GTH-86-290ECA-1086 GOI-120-B,dt.
27-10-1986-Guj.Govt. Gaz.,Ex.Pt.IV-A dt.
27-10-1986 , P.131)

7. It is therefore, amply clear that wheat, on the date of incident, was not governed by the provisions of the Essential Commodities Act as the same came to be deleted from the list of food-grains by virtue of this notification. Mr. Dagli has relied upon a similar order

passed by the appellate authority produced at Annexure "F" wherein a similar question was involved and therein the appellate authority has given a specific finding of quashing the show cause notice in respect of wheat. In the instant case, as the learned appellate authority has not dealt with this question, the order cannot be sustained and needs to be quashed and set aside.Under the circumstances, the petition deserves to be allowed. The order dated 5-7-93, passed by the Collector, Banaskantha at Palanpur, in Case No.3/93 and the order dated 3-9-97, passed by the Deputy Secretary, Food and Civil Supply Department, in Appeal No.39/93 are set aside. Rule made absolute. No order as to cost.

(A.L.Dave,J.)

mithabhai